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Time Auto Transportation, Inc. and Time Auto Transport, L.S. and Randy Hill and Ernest L. Blake. Case 7–CA–43641

December 22, 2011

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER
AND HAYES

The Acting General Counsel seeks default judgment in this case on the ground that the Respondents have failed to file an answer to the reissued compliance specification. On November 22, 2002, the Board issued a Decision and Order,¹ in which it found, inter alia, that the Respondents violated Section 8(a)(3) and (1) of the Act by discharging, and terminating the lease agreements of, its employees Randy Hill and Ernest L. Blake. The Board required the Respondents, among other things, to make whole the discriminatees for any loss of earnings and other benefits resulting from their unfair labor practices. On July 23, 2004, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amount due the discriminatees, on October 3, 2011, the Regional Director reissued its compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations.³ Although properly served with a copy of the reissued compliance specification, the Respondents failed to file an answer.

¹ 338 NLRB 626 (2002).

² 377 F.3d 496; mandate issued on September 13, 2004.

³ On February 17, 2006, the Regional Director for Region 7 approved a settlement agreement in which the Respondents agreed to pay in full the amounts owed to Hill and Blake, including interest. The Respondents made several timely payments in the amount of \$5000 per month, totaling \$330,000. However, about September 6, 2011, the Respondents refused to make any additional payments. Thereafter, the Regional Director reissued the compliance specification. The total amount due set forth in the reissued compliance specification credits the Respondents for the amounts they have already paid to the discriminatees.

By letter dated October 26, 2011, the Regional Director advised the Respondents that no answer to the reissued compliance specification had been received and that unless an appropriate answer was filed by October 31, 2011, default judgment would be sought. To date, the Respondents have failed to file an answer.

On November 4, 2011, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached. On November 9, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents again filed no response. The allegations in the motion and in the reissued compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the reissued compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the reissued compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the reissued compliance specification and we will order the Respondents to pay those amounts to Randy Hill and Ernest L. Blake, plus interest accrued on said amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondents, Time Auto Transportation, Inc. and Time Auto Transport, L.S., Troy, Michigan, their officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts

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following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:⁴

Randy Hill	\$48,005.69
Ernest L. Blake	\$30,579.43
TOTAL AMOUNT DUE	\$78,585.12

⁴ The Board has declined to apply its policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011) of daily compounding of interest on backpay awards, in cases such as this, that were already in the compliance stage on the date that decision issued. *Rome Electrical Systems, Inc.*, 356 NLRB No. 38, slip op. at 1 fn. 2 (2010).

Dated, Washington, D.C. December 22, 2011

Mark Gaston Pearce,	Chairman
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Craig Becker,	Member
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Brian E. Hayes,	Member
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